

**MURRAY PLANNING COMMISSION MINUTES
REGULAR MEETING
TUESDAY, OCTOBER 18, 2005**

The Murray Planning Commission met in regular session on Tuesday, October 18, 2005 at 5:00 p.m. in the council chambers of City Hall located at 104 N. 5th Street.

Commissioners Present: Loretta Jobs, Tom Kind, Howard Koenen, Mike Lovins, Marc Peebles, Dave Ramey, Nelson Shroat and Richard Vanover

Commissioners Absent: Ed Davis and Ed Pavlick

Also Present: Candace Dowdy, Sam Perry, David Roberts, Mayor Rushing, Danny Hudspeth, Tonya Guidry, David Pike, Bob Grant, Sherri Phillips, Roy Johnson, Mike Pitman and other public audience

Chairman Vanover called the meeting to order at 5:00 p.m. and welcomed the guests. Chairman Vanover asked for approval of the September 20, 2005 regular meeting minutes. **Loretta Jobs made a motion to approve the minutes as presented, commenting that they were very detailed. Marc Peebles seconded the motion and the motion carried by a 7-0 voice vote.**

Nelson Shroat entered the meeting.

Public Hearing For Review Of Uniform Application For New Cellular Antenna Tower—400 Sunbury Circle—New Cingular Wireless, PCS, LLC: Mike Lovins abstained from this item due to a possible conflict of interest. Sam Perry stated that this was the first application of this type to be presented to the commission since the approval of a new ordinance regarding cellular towers. Mr. Perry stated that planning commissions are very limited in what they can do regarding guidance of locating and constructing cellular towers. Mr. Perry stated that the city ordinance closely mirrors guidelines in KRS 100.985-986. Mr. Perry stated that the City of Murray has set guidelines for preferences in zoning district, height, collocation and tower type. Mr. Perry stated that New Cingular Wireless, represented by Pike Legal Group, has addressed each of those preferences. Mr. Perry stated that Pike Legal Group has addressed all the specifics that the city requires, in their application. Mr. Perry stated that the proposed location was in the B-2 zoning district, which is preferred above residential zoning. Mr. Perry stated that the application is in agreement with the Comprehensive Plan, because telecommunications infrastructure is recognized as a low-cost investment in the goals and objectives section and that quality communications should be made available to all citizens. Mr. Perry stated that the applicant did make attempt to collocate, but there were not structures of sufficient height in the area, as indicated by the included letter from the RF engineer. Mr. Perry stated that there was an included search area map, where the applicant needed to have an antenna. Mr. Perry displayed aerial photography of the area, pointing out the location of the vacant lot, where the cellular tower is proposed. Mr. Perry reminded the commission that adjacent property owners and all property owners within 500' of the proposed location are required to be notified by certified letter. Mr. Perry stated that the tower is capable of supporting antennas from at least three (3)

cellular companies, which is in conformance with the ordinance. Chairman Vanover asked if there were any questions for the staff, or regarding the staff report.

Being none, Chairman Vanover opened the public hearing. Chairman Vanover swore in David Pike, Attorney from Pike Legal Group, representing New Cingular Wireless. Mr. Pike stated that the application is in full compliance with federal, state and local regulations, as indicated by the staff report, just given. Mr. Pike stated that his group works very hard to meet the comprehensive plan and local guidelines, as well as needs for emergency responders, economic development and customers. Mr. Pike introduced Bob Grant, Pike Legal Group, Sherri Phillips, Radio Frequency engineer for Cingular and Roy Johnson, the project management engineer. Mr. Pike commented that confidentiality was waived for the application, from the outset, even though the applications are deemed confidential by KRS 100.985. Mr. Pike stated that his firm intends to promote open discourse with the public by waiving confidentiality. Mr. Pike stated that there was a need for this tower, because, even though a customer's Cingular phone indicates a good signal, many times in Murray the call is blocked due to capacity being reached. Mr. Pike stated that was an indicator of economic development, and that Murray is growing. Mr. Pike stated that new antennas, in the form of collocations or new towers, will alleviate the capacity problem. Mr. Pike stated that over half of 911 calls are placed wirelessly. Mr. Pike stated that this and other deployments in Murray will significantly improve in-building coverage, so that emergency calls as well as other calls can be placed anywhere. Mr. Pike stated that the latest generation high-speed data services will also be available with these deployments. Mr. Pike stated that his firm attempted to collocate in this area, but there were no structures in the area of sufficient height, location, strength and availability. Mr. Pike stated that the proposed tower is 150' monopole, which is a reflection of the local ordinance, and wise in an urban environment. Mr. Pike stated that the tower is only as tall as necessary, but still can accommodate collocations, which will reduce the number of new towers in the immediate vicinity. Mr. Pike stated that the tower was designed, so that it is less than 200', not requiring an aviation beacon light. Mr. Pike summarized stating that the application meets all statutory and local regulations as well as the Murray Comprehensive Plan. Mr. Pike stated that this application was also on behalf of the people of Murray, who are current and future customers.

Chairman Vanover asked if there was anyone else wishing to speak in favor of the application. Being none, Chairman Vanover asked if there was anyone wishing to speak in opposition to the cellular tower application. Chairman Vanover swore in Howard Steely. Mr. Steely stated that he owned property at 403 Memory Lane. Mr. Steely stated that he was in favor of cellular technology, but that this could decrease the value of his property. Mr. Steely submitted a letter of opposition, (Exhibit 1) from Ron McNutt, a property owner in the vicinity, who could not be present. Chairman Vanover swore in Paul Myhill. Mr. Myhill stated that owns the property to the west and he was under the impression that the Planning Commission passed an ordinance that would prohibit any more towers from being built in the city and that future towers would be built on the perimeter of the city. Mr. Myhill stated that he did not think that this tower would increase his property value. Mr. Myhill stated that he felt that it would be depreciating the property in the vicinity and would be an eyesore. Chairman Vanover swore in Carlos Black. Mr. Black stated that he owned the building at 406 Sunbury Circle and that he agrees with the previous two (2) gentlemen and that he is against the tower being at that

location. Chairman Vanover swore in Jim Fain. Mr. Fain stated that he owned adjacent property and was against the tower totally, that he did not think that this tower would help.

Sam Perry clarified to the audience that there would be no guy wires associated with this tower, and that the city ordinance prefers monopole-type towers. Mr. Perry also explained to the audience that because of the Telecommunications Act of 1996, local governments are very restricted in being able to deny applications, based simply on factors such as aesthetics. Mr. Perry stated that according to KRS and the city ordinance, the Planning Commission has 60 days to give approval or denial, if it was not given, then it is assumed that approval is granted.

Chairman Vanover asked David Pike to respond to the comments from the public. Mr. Pike commented in response to a gentleman in the audience, that the only noise associated with the proposed facility, would be a muffled emergency generator in the event of a power failure; and that is one time when it would be crucial to have power to the facility. Under normal operation it is completely silent. Mr. Pike stated that the fact that this is the only vacant commercial lot in the area means that it is the very reason that the lot was chosen, according to the city ordinance preference for commercial above residential. The towers have to fit into an existing grid, and can not be placed arbitrarily. Not all sites in the search area would work, but after careful testing, it was found that this one would. This type of facility provides a utility to the community, much like water, sewer and gas have been viewed as keys to economic development. Mr. Pike stated that, as a nation, we have decided to be on the forefront of technology, with the passage of the Telecommunications Act of 1996, and this is an application his group feels is the very reason that this vacant lot was chosen for this cellular facility.

Paul Myhill asked staff and the commission if there was anything that the landowner could do, except be at the public hearing, and be informed that the cellular company has met all the guidelines set forth in the ordinance. Mr. Myhill asked if all possibilities for collocation had been exhausted and stated that there is a tower nearby at Key Auto. Legal counsel, Mike Pitman, stated that the City of Murray, unlike many communities, has seen fit to adopt very specific guidelines regarding new cellular communication towers, and if the city had not, the cellular company would have a lot more latitude in locating a tower according to the federal act in 1996. Mr. Myhill commented that new sign regulations seem very strict and questioned why an unsightly 150' cell tower would be allowed.

Chairman Vanover asked David Pike to address the question of the tower on 121 South. Mr. Pike stated that after just speaking with the radio frequency engineer, that tower is not even close to the search area. Mr. Pike stated that his group is currently working with Murray State University, in collocating an antenna on a light standard and that where they can collocate, they do. Mr. Pike stated that cellular networks require antennas to be in specific locations and that antennas have to be evenly spaced away from an existing site, in a grid-like fashion.

Chairman Vanover asked if there was anyone else who would like to speak in regards to the application. Being none, Chairman Vanover closed the public hearing and opened discussion from the commissioners.

Commissioner Shroat asked if the tower has a flexibility standard, to accommodate earthquakes and hurricanes. David Pike stated that the tower has to meet a national design standard, not just a state and a local standard and that this tower exceeds the standards of the Kentucky Building Code. Mr. Pike stated that the tower is designed to withstand 70+ mph sustained wind, with 1/2" of radial ice over the entire structure and that 60 mph is the highest recorded sustained wind in Kentucky. Mr. Pike stated that the tower is engineered to bend over about 2/3 of the way up, to decrease the wind resistance even more. Mr. Pike stated that with winds that high there would be nothing left for the tower to fall on. Commissioner Shroat asked if there were towers designed to collapse. Mr. Pike stated that those types are guyed-type towers, which are designed to collapse on themselves. Commissioner Shroat asked about periodic checks of the facility. Mr. Pike stated that the tower is inspected by an engineer during and after construction. After that, the facility is inspected at least once a month. Commissioner Koenen asked how tall shrubbery could be used at the base of the tower. Mr. Pike stated that there are many possibilities and that he has flexibility to agree to landscaping within the lease area, but recommended that it be minimal in order to allow for maximizing space for additional carriers to locate communications buildings inside the fence. Mr. Pike stated that it would not interfere with the signal. Commissioner Jobs asked Mr. Pike to address the topic of decreased property values. Mr. Pike stated that Marty Brown, who testifies at numerous public hearings, where applications are heavily contested, uniformly comments that after many studies, he finds that cellular towers do not affect the resale value of real estate. Mr. Pike stated that we learn to look through objects on the skyline, such as power poles, utility lines and towers. Mr. Pike stressed that in order to serve an urban area, his client's facilities have to be inside the urban area. Commissioner Jobs asked Mr. Pike if he had a photograph of a monopole-type tower. Mr. Pike stated that he did have a cross section drawing, but not a photograph. Mike Pitman stated that a comparison would be the tall light poles at Roy Stewart Stadium. Mr. Pike agreed those would be similar, although without the lights. Commissioner Kind asked about earthquake construction standards. Mr. Pike stated that it is designed to comply with earthquake standards, including the heightened standards in this region. Mr. Pike commented that the wind resistance actually controls the construction standards, not earthquakes.

Commissioner Peebles asked how much latitude Cingular had in sites within the search area. Mr. Pike referred to the search area map and stated that theoretically an antenna in that search area will work, but the nearer it is to the center, the better it will work. Commissioner Peebles asked about the possibility of moving the tower 500' to the east, just outside the city limits, citing concerns with adjacent property owners and their property values. Mr. Pike stated that they could build a taller, self-supporting tower in a slightly different location, but that is not their request. Commissioner Peebles questioned the influence of the elevation at the site. Mr. Pike stated that their application's objective is to increase capacity, not coverage. Mr. Pike stated that they need to be as close as possible to the center of the search area, in order to do the best job. Mr. Pike reminded the commission that this application meets all of the city's requirements and if the proposed site is moved, not everyone will be pleased with it there, either. Commissioner

Peebles recommended the possibility of moving the site somewhere between South 3rd Street and the Clarks River bottoms, instead of locating in a neighborhood of commercial property. Commissioner Peebles suggested the possibility of the Calloway County Road Department and asked if that would work. Mr. Pike stated that from a radio frequency standpoint, it would, but that is not their application, no matter where the application is made, there could be folks in opposition. Mr. Pike stated that the regulations the City of Murray adopted does not require that the applicant present every possible location. Commissioner Peebles asked if other sites were considered. Mr. Pike stated that he was not sure how many other ground sites were considered. Commissioner Shroat asked if the area Commissioner Peebles referred to was in the floodplain. Mr. Pike stated that if it were, they would not be able to build there.

Commissioner Jobs commented that this has been an open hearing and the commission has heard information, but still is not able to deny the application. Mike Pitman stated that it could be denied, but only under certain findings. Mr. Pitman stated that the Planning Commission is not willingly bearing the burden of this application and that there would have to be something in the Telecommunications Act that allows the city to deny the application, before that route should be considered. Mr. Pitman stated that the summary of all the regulations indicate that the applicant must show attempt to locate on existing structures and concluded that approval or denial should be based on the zoning regulations, statutes and terms of the comprehensive plan. **Nelson Shroat made a motion to approve the application for a new cellular antenna tower at 400 Sunbury Circle based on the fact that the application meets the guidelines set forth in the zoning ordinance as well as the terms of the comprehensive plan. Tom Kind seconded the motion.** Commissioner Koenen asked if the decision could be delayed until a later meeting. Chairman Vanover stated that a decision must be given by October 29th because of the 60 day time frame. Commissioner Ramey asked why the decision should be delayed and stated that he saw no other options. Commissioner Koenen stated that all the commission knows is what they have heard tonight. Commissioner Shroat stated that he made a motion, because it seems that they have heard all the information. Commissioner Peebles requested tabling this item to a later date. Chairman Vanover stated that the previous motion must be voted on. **The roll was called and the motion carried 6-2, with the abstaining of Mike Lovins. Marc Peebles and Howard Koenen voted no.**

Public Hearing For Review Of Uniform Application For New Cellular Antenna Tower—2001 College Farm Road—New Cingular Wireless, PCS, LLC: Sam Perry stated that the proposed location is in the southeastern corner of the Calloway County Alternative School property adjacent to an electrical substation. Mr. Perry stated that this property is zoned government, but holding a public hearing gives the public and commission a chance to be informed about the application, which is required by House Bill 270. Mr. Perry stated that the proposal is a 145' monopole. Calloway County Schools is planning to place two-way radio antennas at the top of this new tower, due to problems with the existing antennas. Mr. Perry showed slides of adjacent property to the south, referring to vegetation recently removed by Murray Electric System. Mr. Perry stated that one property owner in the area called about this application to see if screening could be provided. Commissioner Peebles asked if the existing radio tower on the property would be removed.

Chairman Vanover opened the public hearing. Mr. Pike stated that although this application is exempt due to being on a government zoned property, they are happy to answer any questions. Mr. Pike stated that the objective of this tower is also to enhance capacity for the City of Murray and provide improved in-building coverage. Mr. Pike stated that he could not commit to removing the existing tower. The tower is built tall enough to accommodate the needs of the school board and short enough so that it does not have to be lit. Mr. Pike stated that the moving of the radio antennas to the new tower will make it possible for the other one to be removed, but that will have to be decided by the school board. Commissioner Peebles again asked Mr. Pike if his group could have the tower removed. Mr. Pike stated that they would consider such a request, if the school board asked. Mr. Pike stated that the existing tower was a consideration for collocation, but that it is not strong enough. Mr. Pike stated that the fact that there is an electrical substation nearby indicates that this is a good area for a cellular tower, citing the fact that similar land uses should be grouped. Mr. Pike stated that the tower in the substation compound is too short, at 40'-50', and that Cingular needs a tower of at least 130' in height. Mr. Pike stated that even though this site is exempt from the zoning ordinance, his group has made sure that all the regulations have been met, commenting that they could have built a much taller structure that was not monopole-type. Mr. Pike commented that contrary to some previous discussion, the commission does have a say in the siting of cellular towers, by the adoption of local regulations that indicate suggestions for zone, type, setback and height. Mr. Pike stated that this tower also has no guy wires and is silent in operation. Chairman Vanover asked if anyone else would like to speak in favor of or in opposition to this application. Jack Thomason came forward and stated that he was not in opposition to or in favor of, but simply had some questions. Mr. Thomason lives at 800 North 20th St. Mr. Thomason asked if the tower would interfere with Verizon Wireless, AM radio, satellite or cablevision. Mr. Pike came forward and stated that this tower would not affect Verizon communications. Mr. Pike stated that by being a FCC license holder they are obligated to provide quality services and to not interfere with other communications and that the facility can be shut down by the FCC if valid complaints are filed. Mr. Pike stated that there has been no example of that happening in his past experience. Chairman Vanover closed the public hearing.

Loretta Jobs asked when there would be a tower in the lakes area. Mr. Pike stated that he would be glad to find an answer for the commission. **Dave Ramey made a motion to approve the application for a new cellular antenna tower at 2001 College Farm Road based on the fact that the application meets the guidelines set forth in the zoning ordinance as well as the terms of the comprehensive plan. Loretta Jobs seconded the motion.** Mike Pitman asked for confirmation of the guidelines being met. Sam Perry stated that the screening requirement could not be met, because of the lease area being on the property line. Commissioner Koenen stated that he would be voting no as a protest against being rushed. **The motion carried 7-1. Howard Koenen voted no.**

Election Of Officers: Chairman Vanover stated that the current officers were: Chairman: Richard Vanover, 1st Vice-Chairman: Ed Pavlick, 2nd Vice-Chairman: David Ramey, Secretary: Loretta Jobs. Chairman Vanover asked if there were any nominations on the floor for any of the positions. Nelson Shroat made a motion to keep the same slate

of officers. Tom Kind seconded the motion and the motion carried with an 8-0 voice vote.

Chairman Vanover asked if there were any questions or comments.

Loretta Jobs asked for staff to check a property on Lowes Drive that needed mowed. Commissioner Kind asked if the commissioners needed to be present at a city council workshop regarding annexation. Candace Dowdy and David Roberts stated that they did not.

Mike Pitman stated that the commission needs to clearly state findings upon which a conclusion is based, to avoid the vulnerability for questioning of the commission's decision. Mr. Pitman recommended using elements in discussion, such as specific economic changes cited in discussion of re-zoning, to be placed in the form of a motion, for the record. Commissioner Peebles stated that economic changes are difficult to quantify. Sam Perry stated that those changes refer to changes not anticipated by the comprehensive plan. The commission agreed that the comprehensive plan needs to be looked at much closer and more frequently. Richard Vanover commented that although some of these decisions, such as cell tower hearings are difficult, it should be noted that city council does have the final say of recommended ordinances, which provides another layer of checks and balances. Loretta Jobs stated that is difficult for property owners to understand.

Being of no further business, the meeting adjourned at 6:32 p.m.

Chairman, Richard Vanover

Recording Secretary, Sam Perry